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## THE CASE OF THE BRIG POCKET.

C. T. NEU.

## I. THE CAPTURE OF THE POCKET.

In March, 1836, when Texas was engaged in a life and death struggle with Mexico, and when the Texans were particularly anxious to gain the good will of the government and the people of the United States, an event occurred which might have resulted in alienating the sympathy of that nation had the Texan authorities not taken immediate steps to correct matters. This was the capture of the brig *Pocket*, a vessel sailing under American colors.

An account of the capture was given by Alcée La Branche, the United States *chargé d'affaires* to Texas, in a letter which he wrote to R. A. Irion, the Secretary of State of the Republic of Texas, on November 29, 1837. He says:

On March 20th. of 1836, the brig *Pocket*, sailing under american colors and belonging to citizens of the United States, left New Orleans for Matamoras. On the voyage she was captured by the Texan armed schooner *Invincible*, commanded by Jeremiah Brown, and carried to Galveston, and her cargo appropriated without trial or condemnation by persons acting under the authority of the Texan government. The captain and the crew, with the exception of the second mate, who was still more severely delt with, were detained nineteen days at that place, after which they were released and suffered to embark for New Orleans. Permission was given them to take such articles of private property as belonged to them, but after a general search they were unable to find anything. Their clothing, hats, books, quadrants, charts were all missing, having been already secured by the captors. Previous to this the passengers were transferred on board a Texan armed schooner called *Brutus*, where they were stripped and searched by a person named Damon, who acted as lieutenant, and four of them, viz., Hill, Hogan, Murje, and Campo were immediately put in double irons by him. One of the passengers, Taylor, had his trunk broken open by this Damon and four hundred and ninety-seven Dollars (\$497) together with other property taken therefrom, amounting in value in all to eight hundred dollars (\$800). When he desired to obtain a simple receipt for the money alone he was put in double irons.

Hogan and Campo received one hundred lashes with a cat-o-nine tails, stretched on an eighteen-pound cannon and were threat-

ened by Hurd, acting as captain of the Brutus, and Damon, that they should be hanged; the foreyard was accordingly loosed and braced for that purpose, and the inoffending victims were actually brought on deck with ropes around their necks and tortured with their impending fate. Somers and Taylor were kept in irons, the former for the space of twenty-five days, and the latter for seven weeks. At the expiration of these periods, instead of being released, they were forcibly detained, without any legal pretext or excuse for upwards of four months and seven months separately, when they were permitted to depart for the United States. Somers during all this period was compelled to perform various work, such as unloading vessels, etc., and had all his clothing and instruments of navigation taken from him.<sup>1</sup>

In the same letter, La Branche also gives an account of the seizure of another American vessel, the *Durango*, which at about the same time as the capture of the *Pocket*, was seized at Matagorda and pressed into the service of Texas by the orders of John A. Wharton, adjutant general of the Texas army, and William S. Brown, commander of the Texan armed schooner *Liberty*. The claims for both vessels were usually urged together, and when matters were finally settled, provision was made for the payment of an indemnity for both together.

La Branche's account gives only one side of the affair; it is also somewhat prejudiced. The treatment of the crew and passengers was not at all as brutal as he made it appear; in fact, Captain Howes of the *Pocket*, the first officer, and several of the crew made an affidavit in New Orleans to the effect that while they were under the control of Captain Brown they were treated with kindness and respect. Alexander Humphrey, a passenger on the *Pocket*, made a statement to the same effect to William Bryan, the Texan agent at New Orleans. He also stated that no part of the cargo went to the crew of the *Invincible*.<sup>2</sup>

The true facts in the case seem to have been somewhat as follows: Captain Brown, in the exercise of the belligerent rights of Texas, was cruising against her enemies and attempting to enforce the blockade of the Mexican ports. The *Pocket* was bound for Matamoras, a Mexican port, and when she fell in with the *Invincible* her captain refused to show his papers. Captain Brown

<sup>1</sup>La Branche to Irion, November 29, 1837, in Diplomatic Correspondence of the United States and Texas.

<sup>2</sup>*The True American*, May 14, 1836.

then boarded the brig, compelled the officers to deliver up the papers<sup>1</sup> and examined the cargo. The examination disclosed the fact that the *Pocket* was sailing under false papers and that the cargo did not correspond with the manifest and papers showing her clearance from the custom house at New Orleans. There seems to be no doubt that the cargo consisted of contraband of war, this fact being clearly brought out on the trial of the crew of the *Invincible*. There is some conflict of statement as to the articles composing the cargo. It is certain that the *Pocket* was carrying provisions that were intended for the Mexican army,<sup>2</sup> and Captain Brown stated that powder, ammunition, and other military stores were found on the brig.<sup>3</sup>

But this was not all; a further examination of the papers revealed dispatches to Santa Anna, containing information that would aid him in his operations against Texas. He was informed of the force on each of the Texan vessels, and instructed as to the best mode of attacking the Texans on land.<sup>4</sup> There was also included "a chart of the whole coast, minutely and beautifully laid down—all surroundings, etc."<sup>5</sup> On board the *Pocket* were also several persons who were in the Mexican service, among them the notorious Thompson, who had only a short time before been imprisoned at New Orleans on the charge of piracy.<sup>6</sup> This was the same Thompson who, while endeavoring to enforce the Mexican revenue laws, had been so insolent to the Texans at Anahuac. In

<sup>1</sup>The 23d article of the treaty of 1831 between the United States and Mexico provided that in case either of these parties was at war, vessels belonging to the citizens of the other should be provided with sea letters showing that the vessel truly belonged to the citizens of that country. Certificates of the cargo were also to be furnished so as to show that the cargo was not contraband of war. Without such papers the vessel might be detained and adjudged by the proper tribunal a legal prize. (*U. S. Treaties and Conventions*, 670.) There is no evidence that at this early date Texas laid claim to the privileges of this treaty, but at a later date both the United States and Texas, the latter being a component part of Mexico at the time the treaty was made, regarded the treaty as mutually binding on them. If for no other reason, this should have been sufficient to show that no act of piracy had been committed.

<sup>2</sup>*The New Orleans Bee*, May 9, 1836.

<sup>3</sup>*U. S. District Court Records*, New Orleans, Case No. 3798.

<sup>4</sup>*The True American*, May 5, 1836.

<sup>5</sup>Triplett to Burnet, April 9, 1836, in *Records Department of State, Texas*, Book 34, 213.

<sup>6</sup>*Exec. Docs.*, 25th Cong., 2d Sess., XII, 720-30.

September, 1835, he attacked the schooner *San Felipe*, a vessel owned by citizens of the United States, but was himself captured by the *San Felipe* and carried to New Orleans to answer to the charge of piracy. With him at the time of the capture was a lieutenant of the Mexican army, Don Carlos Ocampo.<sup>1</sup> They were released on January 15, 1836, but Thompson was immediately re-arrested by his creditors.<sup>2</sup> But their affairs were apparently soon straightened out; and both were returning to Mexico on the *Pocket* when it was captured. With them were Hogan and Taylor, officers of the Mexican navy.<sup>3</sup> This probably explains how the papers describing the coast of Texas came to be found on the *Pocket*—Thompson may have collected the information contained in them while he was stationed at Anahuac.

The conduct of the Texans after the capture was set forth by Samuel Ellis in a communication to the editor of the *New Orleans Bee*. He said:<sup>4</sup>

You assert that the cargo was American property and actually belonged to Lizardi & Co. until delivered.<sup>5</sup> The evidence of one of the firm, given before the examining court,<sup>6</sup> was that the cargo on shipment was by the order of and charged to Rubio & Co.; that the premium was charged to them and that they considered the cargo at their risk. That such was the understanding is evident from the clause of the charter which expressly stipulates that the brig shall carry a signal generally known as that of the acknowledged agents of Santa Anna, which signal was to be furnished by Lizardi & Co. As further proof of the character of the vessel and the purpose for which she was engaged we have the evidence of three witnesses on the trial that Captain Howes acknowledged to them that he was engaged after his arrival at Matamoras to transport Mexican troops to Texas. . . .

On the arrival of the *Pocket* at Galveston she was, by the evidence of the captain and crew, given over to the Texan authorities

<sup>1</sup>Sometimes written O'Campo, or simply Campo.

<sup>2</sup>*Exec. Docs.*, 25th Cong., 2d Sess., XII, 730.

<sup>3</sup>*The True American*, May 5, 1836.

<sup>4</sup>His communications to the *Bee* are found in the numbers for May 20, 21, and 24, 1836. He latter printed all three in form of a circular under the title "Capture of the Brig Pocket," a copy of which is in the Austin Papers.

<sup>5</sup>He was referring to an editorial in the *Bee* for May 16, 1836. Lizardi & Co. was the firm that shipped the cargo of the *Pocket*.

<sup>6</sup>Referring to the trial of the crew of the *Invincible*.

and the allegations in the protest,<sup>1</sup> which carry upon their face the appearance of oppression, were made under the direction of, and by the order of the Texian government, and being out of the jurisdiction of the United States, and perpetrated by a government *de facto*, that government is alone responsible. Almost every allegation made in the protest is proved to be false . . . by the proof given on the trial. Several witnesses deposed as to the extreme delicacy used in the examination of the baggage of the passengers, and that American property was in every instance respected. So far as regards the treatment of the crew while on Galveston Island, being put into a tent on the beach, and being short of provisions, the president of Texas was at the same time living with his family under the same shelter and equally destitute. The refusal to admit him on board his own vessel was caused by his own conduct, of which ample evidence can be given.

In regard to the money handed by Mr. Taylor to the Secretary of the Navy, and by him handed to the purser, the Secretary was not the person to receipt for it. Mr Taylor being impertinent and troublesome, was ordered forward in charge of a marine, but was not put in irons, the money was held subject to his order, and has been, or will be, restored to him when demanded.

The second mate Somers, was one of the passengers put on board at New Orleans; he held a commission as Lieutenant in the Mexican navy, and was furnished with funds by the Mexican Consul, as was proved by evidence on the trial, his name was not on the roll of the crew, and he was well known as an enemy and a spy. The other passengers, excepting those well known to be Mexican officers, were treated with attention and respect, and the amount of their passage in the *Pocket*, and in the Congress to New Orleans, together with all damage sustained by them has been paid by the government.

The capture of the *Pocket*, whatever the results thereof, was a very fortunate event for the Texan army. The cargo, consisting mainly of provisions, was "a most timely assistance to the victors of the field of San Jacinto, who, short of provisions for themselves, were thereby enabled to retain the prisoners taken at that decisive victory."<sup>2</sup>

<sup>1</sup>Captain Howes's protest printed in New Orleans after his arrival there. See p. 253 above.

<sup>2</sup>*Texas Almanac*, 1860, p. 163.

II. THE EFFECTS OF THE CAPTURE ON THE AMERICANS.

When the news of the capture reached the United States it caused much excitement, especially at New Orleans. Some looked upon the act as one of piracy. William H. Wharton, who was then in the United States as a member of the first commission sent out by Texas, was very much wrought up over the matter. On April 9, 1836, he wrote to the government of Texas, saying: "There is some talk of piracy having been committed by one of our vessels. In the name of God let the act be disclaimed and the offenders promptly punished if such be the fact. I called on the Secretary of State this morning. He had not heard it officially."<sup>1</sup> The charge of piracy, however, was soon discredited,<sup>2</sup> but the affair brought home to the Americans the insecurity of their commerce on the Gulf. The *New Orleans Bee* voiced the sentiments of those merchants who were not so much concerned over the struggle between Texas and Mexico as they were over the security of their commodities. A few quotations from the *Bee* will show how they viewed the matter:

It is high time that American commerce in the Gulf of Mexico should be protected from both Texas and Mexico, and unless the government interpose the evils will be very serious. . . . Our commerce should be protected from all.<sup>3</sup> . . .

The lesson . . . should not be lost on our Texas friends. It is neither the duty nor the interest of Texas to interfere with Mexican commerce. . . . As much as we love Texas, we love America more, and can not connive at any violation of American rights and commerce by Texas.<sup>4</sup> . . .

We have been shown a declaration signed by two captains of Texas vessels, Brown of the *Invincible* and Hurd of the *Brutus*, that they do not purpose hereafter to attack an American vessel or any ship belonging to American citizens. This was necessary to calm the apprehensions of the public, as the insurance companies and merchants of extensive trade with Mexico were at first firmly resolved to send to Europe for goods ordered from Mexico and have them shipped to Mexico in French and English bottoms as the American flag was no longer respected.

<sup>1</sup>Wharton to Government of Texas, April 9, 1836, in Diplomatic Correspondence of United States and Texas.

<sup>2</sup>*New Orleans Bee*, May 4, 1836.

<sup>3</sup>*Ibid.* May 6, 1836.

<sup>4</sup>*Ibid.* May 7, 1836.

Whether the action of Texas is or is not piracy, they should forego it in order to secure the energies of their friends and prevent the efforts of their enemies.<sup>1</sup> . . .

We are in favor of Texas liberty but not in favor of Texas capturing American vessels.<sup>2</sup> . . .

Of what use is the Star Spangled Banner if it can not protect us from the depredations of a petty state creeping into existence?<sup>3</sup>

William Bryan, the general agent of Texas at New Orleans, in a letter which he wrote to the president of Texas on May 14, 1836, shows the gravity of the situation. He says: "The result of the whole trouble will satisfy you as to the policy of invading the American flag. It would require but a few such instances as that of the *Pocket* to turn the government of the United States against you and stop every expedition in favor of Texas."<sup>4</sup>

### III. COURT PROCEEDINGS IN THE CASE.

1. *In Texas*.—The first question that arose in Texas related to the disposition that should be made of the prize. The exigency required the action of a tribunal of admiralty jurisdiction. As Texas had declared her independence only a month before, the government was still in some confusion, and the machinery of justice had not yet been put in working order. Robert Triplett, in his letter to Burnet of April 9, had recommended a decree establishing an admiralty court.<sup>5</sup> But the government had ere then acted by establishing at Brazoria a district court with admiralty jurisdiction. On April 12 Burnet wrote to Collinsworth:

A prize has been brought to Galveston by Captain Brown. The government has passed a decree to establish the district court. . . . We want an able judge in the district where the trial must take place. Will you then accept the office of district judge for the district of Brazoria?<sup>6</sup>

But it seems that Collinsworth did not accept the position,

<sup>1</sup>*New Orleans Bee*, May 10, 1836.

<sup>2</sup>*Ibid.*, May 16, 1836.

<sup>3</sup>*Ibid.*, May 23, 1836.

<sup>4</sup>Records Department of State, Texas, Book No. 34, p. 251.

<sup>5</sup>*Ibid.*, p. 213.

<sup>6</sup>*Ibid.*, p. 102.



for on June 15 we find Burnet writing to Judge Franklin as follows:

The ordinance establishing the district court for the district of Brazoria and your appointment under that ordinance were measures produced by the present exigency of the country which requires the action of a tribunal of admiralty jurisdiction. The capture of the *Pocket* produced that exigency, and the principal object of the early organization of your court was that the questions arising from the capture might be promptly and equitably determined, for it was known that the capture would produce great excitement in the United States. Several weeks have elapsed and no proceedings have as yet been had on that important subject. The character of Texas and her interests are daily suffering and the evils admit of no relief but by a just adjudication at your bar.<sup>1</sup>

Thus there was much delay in having the trial, this letter being written almost three months after the capture of the *Pocket*; but Judge Franklin was not responsible for this, for on June 4, Wm. H. Jack wrote to J. K. West:

Owing to unavoidable accidents, it has been impossible to have a trial as to the prize *Pocket*. It is likely to be determined soon.<sup>2</sup>

Just when the adjudication took place is not known, but it was probably some time in the latter part of June or the early part of July. It is known, however, that, as a result of the trial, the *Pocket* was adjudged a lawful prize. On October 27, 1837, R. A. Irion, the secretary of state of Texas, wrote to William Bryan:

Shortly after my note to you relative to the prize brig *Pocket*, I saw Ex-president Burnet, who informed me that the adjudication took place before Judge Franklin, who had been appointed admiralty judge, and that the court condemned the brig as a lawful prize. . . . There is no doubt of the decree having been made.<sup>3</sup>

On what grounds it was condemned is not known, but from the character of the cargo and the papers found on the *Pocket*, the step was amply justifiable.

<sup>1</sup>Records Department of State, Texas, Book No. 34, p. 119.

<sup>2</sup>*Ibid.*, 31. West was president of the company that had insured the cargo of the *Pocket*; he had written to Jack for the proceedings of the Texas court in the case as his company was then involved in a suit growing out of the capture.

<sup>3</sup>Records Department of State, Texas, Book 36, p. 17.

2. *In the United States.*—In the meantime the United States authorities had taken up the matter, for, as we have seen, the capture was considered an act of piracy. After the *Invincible* had brought her prize to Galveston, she proceeded to New Orleans, but owing to the excitement over the capture of the *Pocket* she could not remain there with safety. On April 18, 1836, Bryan wrote to Burnet:

We have been compelled to order the *Invincible* back to Galveston; the capture of the brig *Pocket* is considered by the authorities as an act of piracy. The friends of Texas are among those in authority, and information was given me of the intention of the marshal to take the vessel and arrest the crew. We acted instantly and sent down a supply of provisions and ordered the vessel back to Galveston. We presume she has escaped. Captain Brown is out of the city and will probably not be able to join his vessel. Should she be detained, the cause of Texas will have received the severest blow she has yet met and the agency will be involved in trouble it will be hard to evade. Our situation with all the wealth and power of New Orleans arrayed against us is one of peril and danger.<sup>1</sup>

But the *Invincible* did not get away. Commodore Dallas of the United States Navy, at the request of the insurers of the cargo of the *Pocket*,<sup>2</sup> sent out the sloop of war *Warren* to seize her. This was done on May 1, and the crew of the *Invincible* was lodged in jail by the United States marshal, and held to answer to the charge of piracy.<sup>3</sup> Bryan at once employed the ablest counsel he could secure<sup>4</sup> and had the Texans brought to an examining trial as soon as possible.<sup>5</sup> An examination was held on May 5, but for want of evidence the trial was postponed several days.<sup>6</sup>

In the meantime the seamen were confined in a prison which a

<sup>1</sup>Records Department of State, Texas, Book No. 34, p. 249.

<sup>2</sup>*New Orleans Bee*, May 7, 1836.

<sup>3</sup>*The True American*, May 2, 1836; *New Orleans Bee*, May 3, 1836.

<sup>4</sup>The attorneys for the Texans were Seth Barton, Randall Hunt, and O. P. Jackson. After the trial was over, the citizens of Texas who were then in New Orleans, and among whom were T. J. Green, A. C. Allen, Samuel Williams, and S. Rhoads Fisher, drew up a letter of thanks to the attorneys for their valuable and gratuitous services in defending the crew. (*New Orleans Bee*, May 10, 1836. The letter is dated May 7.)

<sup>5</sup>Records Department of State, Texas, Book No. 34, p. 237.

<sup>6</sup>*The True American*, May 5, 1836.

Texan sympathizer characterized as "a dungeon, the exact model of the 'Black Hole.'"<sup>1</sup>

The trial lasted three days,<sup>2</sup> and on the night of the third day the crew was liberated. Justice Rawle,<sup>3</sup> who tried the case, did not think there was sufficient evidence to justify a trial by jury. It appeared that no criminal act had been committed by the prisoners, as it was shown that the *Pocket* contained contraband articles that were intended for the Mexican army in Texas under Santa Anna. No act of malignant hostility had been committed and, of course, no piracy.<sup>4</sup> After their release, the crew was cheered at every step and had a supper given them and free admission into the theater.<sup>5</sup> This kind treatment showed that the mass of the people in New Orleans was not turned against the Texans by reason of this unfortunate occurrence. There was an attempt on the part of the prosecutors to have the *Invincible* again seized and taken to Key West for a new trial, but nothing came of this.<sup>6</sup>

The Texan sympathizers alleged that the imprisonment of the crew was brought about through the influence of Santa Anna's friends in New Orleans. They said that Lizardi and Co., who shipped the cargo, were the known sub-agents of Santa Anna; they were strengthened in this belief by the fact that the cargo was consigned to one Rubio, who was said to be Santa Anna's general agent and banker.<sup>7</sup> It was also alleged that the Louisiana State Marine and Fire Insurance Company, which had insured the cargo for Lizardi and Co., was attempting to aid the Mexican cause, for it was at their request that the crew of the *Invincible* was

<sup>1</sup>*The True American*, May 6, 1836.

<sup>2</sup>Records Department of State, Texas, Book No. 34, p. 237.

<sup>3</sup>Justice of one of the state courts, who tried the case in the absence of Judge Harper of the U. S. District Court. There seems to have been a provisional law authorizing state judges to act in the absence of federal judges. (*True American*, May 6, 1836.)

<sup>4</sup>*New Orleans Bee*, May 9, 1836.

<sup>5</sup>Records Department of State, Texas, Book No. 34, p. 237.

<sup>6</sup>*Ibid.*, 237.

<sup>7</sup>*The True American*, May 6, 1836. This same firm of M. de Lizardi & Co., had offices in Mexico and England, and was later involved in a case similar to that of the *Pocket*; viz: the case of the *Little Pen* (*THE QUARTERLY*, IX, 6-7). In that case it was also alleged that they acted as Mexican agents in England.

seized. It was pointed out that the insurers would not need to pay a cent of insurance if they could prove that the cargo was contraband of war. But the company did not attempt to establish that fact; instead they sent to Pensacola to get a United States warship to seize the *Invincible*, and this, too, when they knew that a civil officer could just as easily have taken charge of the vessel. The inference, therefore, was that they did not wish to have the fact established that the cargo was contraband, and were attempting to aid the Mexican cause.<sup>1</sup>

But such was not the view taken by all. The *New Orleans Bee* for May 16 has the following to say relative to the matter:

*The Mobile Chronicle* says the *Invincible* was captured at the instance of Santa Anna's agent in this city. Santa Anna has no agent in this city; nor has the Mexican government any commercial agent here. Lizardi & Co. are not agents; they deal with merchants only. In the case of the *Pocket*, they received an order from a Mexican merchant; they were not bound to ascertain the purpose to which the goods were to be put. If there were any articles on board which did not appear in the manifest of the cargo shipped by them, to the captain, not them, belongs the responsibility. The goods belonged to Lizardi & Co. until delivered to the consignees.<sup>2</sup> Hence it can not be said that they were Mexican goods captured in a neutral bottom, but goods belonging to American citizens was captured in an American vessel. Why should Commodore Dallas be assailed for taking a vessel that captured an American vessel with American goods? Why should the insurance company be assailed for requesting that action on the part of Dallas in order to indemnify themselves and prevent future occurrences of a like nature? Why should Lizardi & Co. be assailed for sending goods on their own account to a Mexican merchant?

A few days after the liberation of the crew of the *Invincible*, the officers and crew of the *Pocket* arrived in New Orleans. Feeling was again stirred up and the Texans would have been arrested a second time and brought to trial but for the action of the Texan agents, William Bryan, and Thomas Toby & Brother, who bought the *Pocket* and paid the damages sustained by the officers and crew. On May 14, Bryan wrote to the president of Texas:

<sup>1</sup>*The True American*, May 5, 1836.

<sup>2</sup>See Ellis's answer to this, pp. 279-80, above.

With the assistance of our friends, Thomas Toby and Brother, we purchased the brig and paid her charter and demurrage. We have also been obliged to pay all the damage sustained by the officers and crew, amounting to eight thousand dollars (\$8000). This measure was absolutely necessary to save the vessel from the charge of piracy and maintain the public feeling toward the cause. . . . The *Pocket* now stands as the property of Thomas Toby and Brother.<sup>1</sup>

The purchase of the *Pocket* took place on May 10; Elijah Howes, the master of the vessel, on that day, in consideration of the sum of thirty-five thousand dollars paid him by the Tobys, Bryan, and Hall, agents for Texas, executed a bill of sale of the *Pocket* to T. Toby and Brother.<sup>2</sup> He was also paid fifteen hundred dollars for damages on account of the detention of the *Pocket*, and gave a receipt for that amount on May 10. On the next day he also gave a receipt for one hundred dollars for various articles of personal property taken from him by the officers and men left in charge of the *Pocket* by the government of Texas. Alexander Humphrey, John W. Waterhouse, C. Anderson, and James Doherty were also paid for the damages sustained by them and the owners of the *Congress* were reimbursed for carrying the crew and passengers from Galveston to New Orleans.<sup>3</sup> Thus it seemed that through the exertions of the Texan agents matters were being smoothed out.

But trouble arose in another quarter. On May 19, the Louisiana State Marine and Fire Insurance Company instituted suit in the United States district court against Captain Brown of the *Invincible*, seeking to recover the amount of the premium they had been forced to pay Lizardi & Co. In the libel which they filed with the court they set forth that they had insured the cargo of the *Pocket* for eight thousand dollars; that the vessel was bound for a port in Mexico with which republic the United States was at peace, and that in consequence of the unlawful capture of the *Pocket* they had been forced by virtue of a policy issued to Lizardi & Co. to pay that firm eight thousand dollars. They then al-

<sup>1</sup>Records Department of State, Texas, Book No. 34, p. 251.

<sup>2</sup>Irion to La Branche, December 30, 1837, in Diplomatic Correspondence of the United States and Texas.

<sup>3</sup>Records Department of State, Texas, Book No. 49, p. 212.

leged that because of this payment all right of action against the persons who had unlawfully seized the cargo was transferred to them, wherefore they prayed that Captain Brown should be forced to pay them eight thousand dollars.<sup>1</sup> On the basis of this libel Judge Harper of the federal court ordered that Captain Brown be held to bail in the sum of nine thousand dollars. On May 20 the United States marshal took Brown into custody, from whence he was released on the same day, having given bail with Thomas Toby and William Bryan as sureties.<sup>2</sup> The case was to come up on the second Monday in December, 1836, but the record of the court does not show that anything was done on that day.

The issue in the trial depended mainly on the legal condemnation of the *Pocket* by the Texas court. As early as May 16, J. K. West, the president of the insurance company, had written President Burnet to forward him copies of the condemnation of the cargo of the *Pocket*.<sup>3</sup>

Bryan also bestirred himself to secure the needed evidence in the case. On May 21, the day after he bailed Brown, he wrote to the president:

It will now become the duty of the government to have the cargo condemned by a regular court, to have sufficient evidence forwarded of the character of the cargo, the documents and papers found on board proved as having been taken from the vessel, and all information you may judge necessary to forward to prove the legality of the capture.<sup>4</sup>

There was much delay in forwarding the needed evidence, and it is probable that for this reason the case was continued.

<sup>1</sup>Records United States District Court, New Orleans, Case No. 3798; Records Department of State, Texas, Book No. 34, p. 261. It is hard to see the justness of the demand of the insurers against Capt. Brown. The policy which they had issued contemplated protecting the cargo from precisely the fate that befell it. The cargo was insured against "men of war, fires, enemies, pirates, rovers, assailing thieves, jettisons, letters of mart, and counter mart, surprisals, takings at sea, arrests, restraints and detentions of all kings, princes, or people of what nation, condition or quality soever, barratry of the master and marines, and all other perils, losses, and misfortunes that should come to the hurt, detriment or damage of the goods."

<sup>2</sup>Records of the United States District Court, New Orleans, Case No. 3798.

<sup>3</sup>Records Department of State, Texas, Book No. 34, p. 257.

<sup>4</sup>*Ibid.*, p. 261.

However, some time before February 25, 1837, a judgment by default was rendered against Captain Brown, for on that date the court

On motion of Randal Hunt, ordered that the judgment by default be set aside, and that he [Hunt] be allowed to file an answer on behalf of the defendant in the case.<sup>1</sup>

The attorneys for Brown then filed a plea to jurisdiction, averring that all questions relative to the adjudication of prizes brought into ports of Texas belonged to the tribunals and legal establishments of that country and none other; that officers of Texas war vessels ought not to be arrested in ports of the United States to answer for any capture or seizure made on the high seas; that vessels of belligerent powers may seize neutral vessels, take them into the ports of their [the captor's] country to answer for any breach of the law of neutrals, and the vessels of war are not amenable for such acts before any tribunal of the neutral powers; that the insurance company had arrested Captain Brown, but had in no manner alleged that the capture of the *Pocket* was made within the territory of the United States; that at the time of the capture Texas was a free and independent state, and Captain Brown was commander of one of her public vessels. For these reasons they held that the United States court was without jurisdiction in the suit and, therefore, prayed that Captain Brown be dismissed with his costs.<sup>2</sup> Anticipating an overruling of this plea, the attorneys also filed an answer to the libel of the insurance company. They showed that at the time of the capture Texas had declared her independence and maintained a government, and was, therefore, entitled to exercise all belligerent rights of a free and independent nation; that, under the authority of that government, Captain Brown had the right to cruise against the enemies of Texas; that in his capacity as captain he made a legal prize of the *Pocket*, whose cargo was enemy's property and intended as supplies for the Mexican army; that the *Pocket* was conveying hostile dispatches to the enemy; that she was sailing under false colors; and that her actual cargo did not correspond with the

<sup>1</sup>Minutes of United States District Court, New Orleans, Book for the years 1834-37, p. 346.

<sup>2</sup>Records of the United States District Court, New Orleans, Case No. 3798.

papers showing her clearance from the New Orleans custom house—all of which was in violation of the belligerent rights of Texas. They, therefore, prayed that the libel of the insurance company be dismissed.<sup>1</sup>

But evidently nothing was done at the spring session of the court; for on August 4, 1837, Bryan again wrote to the Secretary of State:

In my letters to the executive under date of February 22, April 12, and 21, I urged upon him the necessity of forwarding certain documents to save the loss of about nine thousand dollars for which I am bound in the United States court, being the value of the brig *Pocket*. Part of the documents were promptly forwarded by S. R. Fisher, Secretary of the Navy, those proving the condemnation of the brig as a lawful prize, the approval of the act by the government, and the record of the court condemning her under the great seal of state have never come to hand. The trial will come up early in December, and if such papers are not produced the amount is lost. . . . Will you do me the favor of forwarding such papers as are required or such as can be obtained in relation to this matter as early as possible, or advise me that they can not be obtained that I may have time to prepare to meet nine thousand dollars in cash by sacrifices made to meet claims incurred for Texas.<sup>2</sup>

Irion, the secretary of state, at once exerted himself to procure the documents. He wrote to William S. Scott, the clerk of the district court of Brazoria county, requesting him to forward, with the least possible delay, a certified copy of the proceedings of the court in the case. Scott immediately transmitted the proceedings of the court, but unfortunately the decree of condemnation was not among the documents which he sent.<sup>3</sup> Irion at once forwarded to Bryan the documents he had received, but the attorneys in the case finding that they were not sufficient, obtained an adjournment of the case until the first Monday in January, 1838. The decree of condemnation of the *Pocket* could not be found among the records at Brazoria, so the only remedy was to enter the decree anew in open court at the next session of the district court. It

<sup>1</sup>Records of the United States District Court, New Orleans, Case No. 3798.

<sup>2</sup>Bryan to the Secretary of State, August 4, 1837, in Diplomatic Correspondence of United States and Texas.

<sup>3</sup>Records Department of State, Texas, Book No. 36, p. 17.



seems that this matter was put into the hands of F. A. Sawyer, the attorney who had argued the case before Judge Franklin in 1836. On December 21, 1837, he wrote to the secretary of state from Brazoria:<sup>1</sup>

As soon as I arrived here I made out a decree on the back of the original petition in the case of the brig *Pocket* and sent it by express together with a certified copy to Judge Robinson both of which he signed, as was required, and returned to me. The original decree I have filed in the office of the clerk of the district court; the certified copy, dated about the 10th of December and signed by Scott, who was at that time clerk of the district court, and certified to by Judge Robinson, I enclose to you and hope you have received it in time to go by the present trip of the *Columbia*.

Irion transmitted these documents to Bryan on January 3, 1838, saying:

With regard to the brig *Pocket* I have at last succeeded in procuring all documents required by the memorandum of Mr. Hunt<sup>2</sup> which are herein enclosed to you. It was impossible to obtain them earlier. The matter was brought up before Judge Robinson, having alike with all other judges admiralty jurisdiction and under the laws the privilege of sitting on admiralty cases whenever occasion requires.<sup>3</sup>

The evidence must have arrived too late, for the case seems to have been again postponed; at any rate it was still pending on February 28, 1839. On that date Bryan wrote to the Secretary of State:

On May 30, 1836 I advised the executive that I had bailed Captain Brown of the *Invincible* on the suit of the Louisiana State Marine and Fire Insurance Company for nine thousand dollars. The suit is now pending in the United States District Court. Has any diplomatic arrangement been made with the United States in regard to the settlement of the claims of the insurers of the cargo

<sup>1</sup>Sawyer to Secretary of State, December 21, 1837, in Domestic Correspondence, Texas.

<sup>2</sup>Randal Hunt and Seth Barton were the attorneys for Capt. Brown, as they had been for the crew of the *Invincible*.

<sup>3</sup>Records Department of State, Book No. 36, p. 20.

of the *Pocket*, or has any claim been made upon the government of Texas for the value of her cargo?<sup>1</sup>

Webb, the Secretary of State, replied on March 15, saying:

There is no evidence in this department that any arrangement was made by the governments of the United States and Texas to settle claims of insurers or pay for the cargo. In private conversation with Mr. La Branche I have found out that the claims of the insurers of the cargo (and for which suit has been instituted in New Orleans) was not included in the treaty.<sup>2</sup>

The case was evidently settled outside of the court, or simply died on the docket, for there is no record in the minutes of the court of a decision ever having been made. The last reference to it in the minutes is dated May 18, 1840, and states that the case having been called was continued.<sup>3</sup>

#### IV. SETTLEMENT BY TREATY WITH THE UNITED STATES.

While the insurers' claims were pending in the courts of the United States, some of the officers and passengers of the *Pocket* were also clamoring for redress. On September 1, 1836, T. Toby and Brother wrote to the president of Texas:

We have just been waited on by the United States district attorney relative to a Mr. Taylor, who was a passenger on the *Pocket* and had four hundred and ninety-six dollars (\$496) in money taken from him.<sup>4</sup>

By January, 1837, the matter had also come up before the United States government. Wharton, the Texan minister at Washington, on January 6, wrote to Austin that Forsyth had exhibited to him a complaint of the mate and other officers of the *Pocket* which should be attended to at once.<sup>5</sup> Henderson, the secretary

<sup>1</sup>Records Department of State, Texas, Book No. 36, p. 15. Bryan was led to make this inquiry from the fact that a convention of indemnity had been entered into by the United States and Texas relative to the capture of the *Pocket*.

<sup>2</sup>*Ibid.*, p. 78.

<sup>3</sup>Minutes of the United States District Court, New Orleans, Book for years 1839-1841, p. 245.

<sup>4</sup>Records Department of State, Texas, Book No. 34, p. 394.

<sup>5</sup>Wharton to Austin, January 6, 1837, Diplomatic Correspondence of the United States and Texas.

of state, in reply, informed him that he could assure the government at Washington that the government of Texas would at any time cheerfully hear all complaints and give all such as were entitled to it speedy justice as soon as their complaints could be properly laid before it.<sup>1</sup> On November 29, 1837, in the same letter in which he gave an account of the capture of the brigs *Pocket* and *Durango*, Mr. La Branche demanded payment, not only for the vessels, but also an indemnity for the property taken from individuals on board these vessels, and for other injuries they had sustained.<sup>2</sup> Irion, in answering this, informed La Branche that the president had been considering the cases, and that as regarded the *Durango* he (the president) would recommend to Congress the passage of an appropriation for the amount demanded for it; but as regarded the *Pocket*, the circumstances of her capture and subsequent purchase by Thomas Toby and Brother rendered it improper for him to recommend a second payment; he would, however, recommend that a payment be made to Taylor.<sup>3</sup> It will be remembered that the Texas agents paid Captain Howes thirty-five thousand dollars for the *Pocket*, which was insured by a New York firm, Barclay and Livingston. When the brig was captured, its owners called upon that firm for payment. Now, it was a question whether the insurance company was obliged to pay the premium. Should they pay and then call upon the Texas government to reimburse them, the latter, should it comply, would have paid for the vessel twice. The attorney general of Texas maintained that the payment made to Captain Howes was conclusive of the rights of the owners.<sup>4</sup> He argued that the acts of the master of a vessel were binding on the owners, and that third parties, arranging with him as the accredited agent of the owners, should not be held responsible for losses resulting through his bad faith or inattention. Whether or not the insurers paid the premium does not appear.

However, the president soon changed front completely, and before March 19, 1838, he had waived all objections to the payment

<sup>1</sup>Henderson to Wharton and Hunt, February 19, 1837, in Diplomatic Correspondence of United States and Texas.

<sup>2</sup>La Branche to Irion, November 29, 1837, in Diplomatic Correspondence of United States and Texas.

<sup>3</sup>Records Department of State, Texas, Book No. 36, p. 40.

<sup>4</sup>*Ibid.*, Book No. 49, p. 111.

of the claims and had decided to recommend to Congress the payment of them all. It is probable that a desire to avoid any unpleasant relations with the United States induced him to give up his position. The United States *chargé*, La Branche, and the secretary of state of Texas, Irion, then met at Houston, and on April 11, 1838, concluded a convention whereby Texas agreed to pay to the United States government eleven thousand seven hundred and fifty dollars, which was to be distributed among the claimants. This sum, with interest accrued thereon at the rate of six per cent, was to be paid to the properly authorized person one year after the exchange of the ratifications of the convention.<sup>1</sup> On May 3, the Congress of Texas, in secret session, consented to and advised the ratification of the convention;<sup>2</sup> and on June 14 the Senate of the United States did likewise.<sup>3</sup> There was some slight difficulty in effecting the exchange of the ratifications as is shown by Catlett, who was in charge of the Texas legation at Washington, in his letter to Irion of June 22, 1838. He says:

I have received the convention of indemnity to American citizens for losses sustained by the capture of the brigs *Pocket* and *Durango*. The Secretary of State from the first showed a disposition to accept the treaty and have it ratified on the part of the United States. But he seemed much in doubt whether it could be received on account of its not having been ratified by the president under the great seal of Texas, which was indispensable to a formal exchange. Another difficulty was that I had no specific powers for such purposes. But owing to the smallness of the amount and the unimportance of the matter he yesterday waived these objections and accepted the treaty as it stood.<sup>4</sup>

Texas was young in diplomatic affairs, and Catlett was no doubt somewhat embarrassed by the difficulties with which he had to contend. The exchange took place on July 6, 1838. The following day Catlett wrote to Irion:

In exchange for the copy of the convention which he placed in my hands, being the same as was transmitted by you, Mr. Forsyth

<sup>1</sup>Records Department of State, Texas, Book No. 36, p. 111; *United States Treaties and Conventions*, p. 1078.

<sup>2</sup>Records of 2d Congress of Texas, Department of State, File Box 11.

<sup>3</sup>Records Department of State, Texas, Book No. 41, p. 149.

<sup>4</sup>*Ibid.*, 147.

gave me a formally ratified copy on the part of the United States. It was handsomely bound and had the United States seal attached. A similar ceremonial was expected to have been observed on the part of Texas, but that being impracticable, under the circumstances, he had agreed to waive any difficulties on this score as I mentioned in my last dispatch.<sup>1</sup>

In this connection it is interesting to note that this was one of the only two conventions that Texas ever concluded with the United States.

On May 10, 1839, President Van Buren authorized La Branche to receive the indemnity and to give the necessary acquittal.<sup>2</sup> On July 6, 1839, one year after the exchange of the ratifications, James Webb, the Secretary of State of Texas, turned over to La Branche a draft on the Merchants Bank of New Orleans for twelve thousand four hundred and fifty-five dollars, that being the amount stipulated in the convention with the accrued interest. La Branche on the same day executed a receipt for that amount, giving

full acquittances to the government of Texas for all claims against said government of the United States for the capture, seizure and detention of the brigs Pocket and Durango and for injuries suffered by American citizens on board the Pocket.

The acquittances were to take effect as soon as the draft should be paid. On July 18, Robert Coupland of the Merchants Bank wrote to Webb acknowledging the receipt of the draft and stating that it had duly honored.<sup>3</sup>

<sup>1</sup>Records Department of State, Texas, Book No. 41, p. 149.

<sup>2</sup>*Ibid.*, p. 200.

<sup>3</sup>*Ibid.*, Book No. 36, p. 111; Coupland to Webb, July 18, 1839, in Diplomatic Correspondence of United States and Texas.